

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7500

Petition of New England Power Company d/b/a )  
National Grid, for a Certificate of Public Good, )  
pursuant to 30 V.S.A. Section 248, authorizing the )  
G-33 Transmission Line Refurbishment Project in )  
the towns of Rockingham, Westminster, Putney, )  
Dummerston and Brattleboro, Vermont )

Order entered: 7/10/2009

**ORDER RE MOTIONS TO INTERVENE**

On March 16, 2009, New England Power Company d/b/a National Grid ("NEP") filed a petition, pursuant to 30 V.S.A. § 248, requesting Vermont Public Service Board ("Board") approval for the reconstruction of the G-33 transmission line in the towns of Rockingham, Westminster, Putney, Dummerston and Brattleboro, Vermont.

On June 18, 2009, Anton Trust, LLC ("Anton Trust"), Black Locust Land Trust, LLC ("Black Locust"), Connecticut River Bottom, LLC ("Connecticut River"), and Orchard House, LLC ("Orchard House") filed motions to intervene in this docket. However, the motions did not comply with Board Rule 2.204(A) because they were not served on all other parties to the proceeding.

The motions to intervene by Anton Trust, Black Locust, Connecticut River, and Orchard House were filed by John R. Anton. Mr. Anton must file the motions with all parties and must refile with the Board at that time. After service has been completed, parties will have seven days to respond to the motions. In addition, the motions must be supplemented to identify the locations of the affected properties. Finally, Mr. Anton should provide evidence that he has authority to act on behalf of the identified companies, in accordance with Board Rule 2.201(B).

On June 18, 2009, Nathaniel Hendricks of Putney, Vermont, filed a motion to intervene in this docket, pursuant to Board Rule 2.209(A) and (B). In his motion, Mr. Hendricks indicates

that he holds significant land over which the G-33 transmission line passes and the proposed project will have an undue adverse effect on soil and groundwater and bring economic harm to his property. Mr. Hendricks asserts that he is not adequately represented by the existing parties. Mr. Hendricks' motion also raises environmental and sanitation claims with regard to National Grid's past operation of the right-of-way containing the G-33 transmission line.

On June 25, 2009, NEP filed a response to Mr. Hendricks' motion to intervene. NEP opposed the motion to intervene of Mr. Hendricks. NEP stated that the majority of interests asserted by Mr. Hendricks are in the nature of potential civil claims against NEP that are unrelated to this proceeding and can be adequately addressed in other forums. NEP asserted that Mr. Hendricks has failed to identify a substantial interest that may be affected by the outcome of this proceeding. NEP contended that to the extent that the interests identified by Mr. Hendricks in his motion do relate to the proceedings at hand, these generalized interests will be adequately protected by the Vermont Department of Public Service ("Department") and by the Vermont Agency of Natural Resources ("ANR"). In addition, NEP stated that it opposes Mr. Hendricks' motion because his intervention is likely to cause undue delay in the proceeding. NEP cited to the Vermont Supreme Court's decision in In re Putney Paper Co., which documents Mr. Hendricks' approach to litigation, and notes his propensity to seek review in multiple forums and his failure to comply with scheduling orders:

Hendricks appealed the variance [granted to Putney Paper Company] to this Court, the Waste Panel, the Environmental Board, the Water Resources Board, the Environmental Law Division, and the Windham Superior Court. The Windham Superior Court, the only forum with jurisdiction to entertain the appeal, dismissed it for failure to prosecute pursuant to V.R.C.P. 41(b)(3), because Hendricks had failed to comply with three separate scheduling orders. The dismissal order operated as an adjudication upon merits, and Hendricks never appealed it. Furthermore, Hendricks's appeal to the superior court did not challenge the duration of the variance. This argument has never been raised below, and we shall not entertain it here.<sup>1</sup>

On June 25, 2009, the Department filed a response to Mr. Hendricks' motion to intervene. The Department concurred with the response filed by NEP and agreed with its request that the

---

1. In re Putney Paper Co., 168 Vt. 608, 611 (1998); NEP Letter to the Board, June 25, 2009.

Board deny the motion to intervene. The Department stated that Mr. Hendricks makes no demonstration of any adverse impact to his property, or to any other substantial interest of his, that could occur as a result of the activities associated with the transmission-line-refurbishment project. The Department noted that Mr. Hendricks' claims of environmental contamination on his real property and demands for remedial action are cognizable in the civil courts. The Department stated that any environmental concerns noted by Mr. Hendricks will be addressed by the ANR. The Department concluded that Mr. Hendricks' intervention motion fails to meet the requirements of Board Rule 2.209(A) or (B) and should be denied.

On July 2, 2009, Mr. Hendricks filed a reply to NEP's response to his motion to intervene. Mr. Hendricks continued to assert that as an adjoining landowner, he has a substantial interest which may be adversely affected by the outcome of the proceeding and that the proposed project included no provision "for the safe removal of the toxic and dangerous pollutants." Mr. Hendricks also maintained that his interests are not adequately represented by existing parties and "has prior experience and significant dedication to add local and regional input into this process."

On July 7, 2009, NEP filed a response to Mr. Hendricks' reply. NEP continued to oppose Mr. Hendricks motion to intervene. NEP stated that Mr. Hendricks' reply confirms that his claimed substantial interest is the alleged pre-existing pollution on his property and not pollution that may be caused by the proposed project.

The motion to intervene filed by Nathaniel Hendricks is denied. Pursuant to the Board's Rule 2.209(B)(3), the Board shall consider "whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public." In its July 25 response to Mr. Hendricks' motion to intervene, NEP stated that it opposes Mr. Hendricks' motion because his intervention is likely to cause undue delay in the proceeding, citing the Vermont Supreme Court's decision in In re Putney Paper Co. The Department concurred with NEP's opposition to Mr. Hendricks motion to intervene. In his July 2 reply to NEP's response, Mr. Hendricks did not dispute NEP's assertion that his participation would unduly delay the proceeding.

Pursuant to the Board's Rule 2.209(B), "a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest

which may be affected by the outcome of the proceeding." Mr. Hendricks has not demonstrated a substantial interest in the proceeding that will not be adequately protected by other parties. Also, based on Mr. Hendricks description of his intent, it appears that there are alternate forums in which he could appropriately seek to protect those interests. It also appears that Mr. Hendricks' intervention will unduly delay the proceeding, and I deny his motion to intervene. I note that the Board's procedures provide Mr Hendricks with the opportunity to participate in the public hearings and submit comments to the Board.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 10<sup>th</sup> day of July, 2009.

s/Mary Jo Krolewski  
Mary Jo Krolewski  
Hearing Officer

OFFICE OF THE CLERK

FILED: July 10, 2009

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*